



PUBLIC SCHOOL OPEN ENROLLMENT INFORMATIONAL BULLETIN

Bulletin 16-03

June 2016

Full-Time Public School Open Enrollment Appeals Information for Parents (Appellants)

DECISIONS THAT MAY BE APPEALED

If your open enrollment application has been denied by either the nonresident or resident school district, you may file an appeal with the Department of Public Instruction (DPI) within 30 days of the day the notice was postmarked or delivered to you, whichever is earlier. If your appeal is postmarked later than the 30th day after the notice is mailed or delivered, the DPI will notify you that we will not accept it.

An appeal is a request for DPI to review a school board's decision to determine whether the school board's decision was arbitrary or unreasonable. In reviewing the decision, the DPI will determine whether the school board has done all of the following:

- Adopted a policy as required in state law and that complies with state law.
- Adopted criteria upon which to base its decision (example, adopted class size criteria to determine how many spaces are available in the district).
- Considered all factors it is required to consider.
- Followed its policy exactly, with no exceptions.

The DPI will not consider other factors, such as your reasons for applying for open enrollment, whether the resident school district is meeting your child's needs, transportation issues, child care issues or whether the transfer is in the pupil's best interests (although this may be a consideration for denial of an alternative procedure application).

You may file an appeal if:

- Either the nonresident or resident school board denied an open enrollment application that was submitted during the annual February-April application period.
- A nonresident school board has notified you that your child's open enrollment is being terminated because:
 - The special education or related services required in your child's new or revised IEP are not available in the nonresident school district or there is no space.
 - Your child has been habitually truant.
 - Your child who is enrolled in a virtual charter school has failed to respond appropriately to assignments from school staff.
- Your resident school district has denied an application submitted under the alternative application procedure.

Wisconsin Department of Public Instruction
Tony Evers, PhD, State Superintendent
125 S. Webster Street, P.O. Box 7841
Madison, WI 53707-7841

Open Enrollment Program
Jennifer Danfield
Michael Bormett
Kari Gensler-Santistevan
openenrollment@dpi.wi.gov; 888-245-2732
<http://dpi.wi.gov/oe>

School Management Services
Tricia Collins, Director
(608) 266-7475
tricia.collins@dpi.wi.gov

The Wisconsin Department of Public Instruction does not discriminate on the basis of sex, race, religion, age, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

You may not file an appeal if:

- Your application was approved by the nonresident school board, but you did not get the school assignment you requested.
- Your application submitted under the alternative application procedure was denied by the nonresident school district.

REQUIREMENTS FOR FILING AN APPEAL

An appeal must be in writing and must be signed. You can either use the DPI's appeal form¹ or you can write a letter or brief. The appeal must include all of the following:

- A copy of the notice of denial. (If you no longer have the notice, you may still file an appeal, but processing will be delayed, as we must obtain this information from the school district before we can begin to process your appeal.
- A copy of the postmarked envelope in which the notice of denial was mailed and any other information that came with the notice. (If you do not have the envelope, you may still file the appeal; however, it may delay processing the appeal while the DPI contacts the school district to find out when the notice was mailed.)
- A statement of the decision being appealed. For example: "This is an appeal of the ABC School Board's denial of open enrollment for Johnny Brown to transfer to the ABC School District from the DEF School District."
- A statement of the reasons for the appeal, including why you believe the decision was arbitrary or unreasonable, as it relates to the reason for denial. For example, if the application was denied due to space, you must explain why you believe the board was arbitrary or unreasonable (i.e. wrong) when it determined it did not have space.²
- Any other facts or evidence the parent believes are relevant to the appeal.
- If you are represented by legal counsel, enclose a notice of representation.

If your appeal is missing any required information, or does not allege the decision was arbitrary or unreasonable as it relates to the reason for denial, we will send a letter explaining the deficiency and provide an opportunity for you to correct it. If you do not do so, we will not process the appeal.

If your only reason for filing the appeal is not related to the reason the application was denied, you will be given an opportunity to provide additional explanation. Unless the appeal is of a resident school board's denial of an alternative application due to "best interests of the pupil," your reasons for applying for open enrollment will not be considered in reviewing the appeal.

If the appeal is postmarked more than 30 days from the date the denial was postmarked, it is untimely and the Department does not have jurisdiction to review the decision. If you do not provide a copy of the postmarked envelope, the Department will contact the school board for proof of mailing to determine timeliness before proceeding to process the appeal.

It is not required for either the appellant or the school board to be represented by counsel. No specific legal format is required for filing an appeal, for submitting evidence or briefs, or for responding to an appeal.

¹ You may obtain form PI 9418 from the open enrollment web site at <http://dpi.wi.gov/oe>, or you may write to the DPI, Attn: Open Enrollment Program, P.O. Box 7841, Madison WI 53707, or you may call or email to 888-245-2732 or openenrollment@dpi.wi.gov.

²The open enrollment procedure does not address concerns about how your resident school district provides special education services to your child. For information about resources available to assist you in resolving questions, concerns, and disagreements with your resident school district about special education, go to <http://dpi.wi.gov/sped> or contact the Department's special education team at 608-266-1781.

However, the Department is prohibited from providing legal assistance to either party so if you need legal assistance, it may be desirable to consult an attorney.

The Department may not engage in any ex parte communication with either party. This means the Department will not discuss the specifics of an appeal with either party, although the Department will provide whatever procedural information a party needs.

The appeal and all information concerning the appeal should be sent to:

Open Enrollment Program
Department of Public Instruction
P.O. Box 7841
Madison, WI 53707

Alternatively, you may scan and email your appeal to openenrollment@dpi.wi.gov or fax it to 608-267-9207.

PROCESSING APPEALS

When the DPI receives your appeal, we will send a letter to you and to the school board that denied the application. The letter has several purposes. It will:

- Acknowledge to you that that we have received your appeal.
- Notify the school board that we have received your appeal.
- Direct the school board to provide the record of the decision³: a copy of the application, the notice of denial, the school board's policy, minutes of any relevant school board meetings, all data used to make the decision, and an explanation of the procedures used to make the decision.
- Establish a schedule for submission of the record and briefs, as follows:
 - The school board's record and initial brief (if any) is due two weeks after our letter is mailed.
 - Your brief, if any (including the parent's initial brief and any reply to the school board's brief), is due 10 days after the due date for the school board's record and brief.
 - The school board's reply brief, if any, is due seven days after the due date for your brief.

You are not required to file a brief. However, we recommend that you review the school board's record and brief when you receive them. This is your opportunity to add any evidence or argument to what you have already submitted or to comment on or refute the school board's evidence or argument.

We do not require any particular format for a brief. You may submit a letter in your own words. A brief generally includes a statement of the facts in the case following by your explanation of why you believe the school board's decision was arbitrary or unreasonable and why you believe the DPI should overturn the decision. You should include any evidence you believe supports your argument.

DECISION AND ORDER

The DPI is required to affirm a school board's decision unless the DPI finds the decision was arbitrary or unreasonable. If the school board's policy and criteria are in accordance with state statute and are neither arbitrary nor unreasonable, if the school board properly and consistently applied its policy and criteria, and if the school board followed state law and its policy in determining which applications will be approved and denied, it is likely the decision will be upheld.

³ Bulletin 16-02, Appeals Information for School Districts, specifies the required elements of the record of the decision. See <http://dpi.wi.gov/sites/default/files/imce/open-enrollment/pdf/Bulletin-16-02-Appeal-Info-Dist.pdf>

If your resident school board denied an application submitted under the alternative application procedure because the school board believes the transfer is not in your child's best interests, the DPI must overturn the school board's decision if the DPI determines that denial of open enrollment is not in the child's best interests.

The DPI's decision will be in writing and will be mailed to you by first class mail to the address you state on the appeal. If you move during the time in which the DPI is deciding the appeal, you must notify us of your new address or the decision may be lost or delayed in reaching you.

The DPI will make every effort to decide all appeals before the beginning of the school year. However, given the number of appeals usually received and the short period of time in which to decide them, this may not always be possible. Failure of DPI to decide an appeal by the start of the school term does not deprive the DPI of jurisdiction in the matter.

Either party (you or the school district) may appeal the DPI's decision to the circuit court in your county by filing a petition for review within 30 days after the DPI's decision is mailed. (However, the DPI's decision in an alternative application appeal is final.)

If the school board's decision is upheld by the DPI and if you wish to appeal the DPI's decision to circuit court, we recommend you consult an attorney. The DPI is unable to provide any legal advice or assistance with this.

ADDITIONAL INFORMATION AND ASSISTANCE

For more detailed information about the appeals process, see Bulletin 16-02 Public School Open Enrollment Appeals: Information for School Districts (Respondents).

<http://dpi.wi.gov/sites/default/files/imce/open-enrollment/pdf/Bulletin-16-02-Appeal-Info-Dist.pdf>

The open enrollment statute is Wis. Stats. § 118.51. It may be found at

<https://docs.legis.wisconsin.gov/document/statutes/118.51>

The open enrollment administrative rule is Chapter PI 36, Wis. Adm. Code. It may be found at

http://docs.legis.wisconsin.gov/code/admin_code/pi/36.pdf

For additional information or assistance, contact:

Open Enrollment Program
Department of Public Instruction
P.O. Box 7841
Madison, WI 53707-7841

Email: openenrollment@dpi.wi.gov

Web site: <http://dpi.wi.gov/oe>

Toll-free phone: 888-245-2732

Direct phone (from out of state): 608-264-6707